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SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1947

THE FEDERAL CROP INSURANCE CORPORATION
PETITIONER

v.

A. A. Merrill and N. D. Merrill, Co-Partners, Doing Business Under the Firm Name and Style of Merrill Bros.

BRIEF OF RESPONDENTS

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No. 1064

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BRIEF OF RESPONDENTS

STATEMENT

Respondents present herewith their brief in opposition to petitioners' brief wherein it is attempting to have the judgment of the Supreme Court of the State of Idaho reversed.

It seems advisable in order to adequately present respondents' position to make a statement of the underlying facts of the case as presented to the State Court.

The reference made herein, such as (R. 4), are to the pages of the Transcript of the Record. Plaintiff's exhibits "A" to "E", herein referred to are those attached to the Amended Complaint and appears on pages 111 to 121 of the record. Plaintiff's Exhibits "F" to "O" introduced in evidence (R.31-46) and Defendant's Exhibits 1 to 3, also introduced (R. 57, 60, 85) have not been included in the Transcript of the Record except such parts as were read at the trial.

STATEMENT OF THE CASE

The Federal Crop Insurance Corporation has been organised under an Act of Congress referred to in its brief. Fundamentally the only objective of said Corporation is to write crop insurance. Congress has expressly provided, by amendment of December 23, 1944, C. 214, being Section 1508, Title 7, U.S.C.A. that "in the event that any claim for indemnity under the provisions of this chapter is denied by the corporation, an action on such claim may be brough against said corporation in the United States District Court or in any court of record of the state having general jurisdiction sitting in the district or county in which the insured farm is located, and jurisdiction is hereby conferred upon such district courts to determine such a controversy without regard to the amount in controversy * * *," provided the suit be instituted within one year after the date the notice of the denial of the claim is received by the claimant. Obviously it was contemplated in the enactment of

this legislation that controversies would arise and the courts would have the power to adjudicate them.

The underlying facts in so far as they affect the question herein presented are substantially as follows:

On March 26, 1945, at Idaho Falls, Idaho, at the solicitation of an agent of said Corporation, respondents made application in writing for crop insurance covering their 1945 spring wheat crop and other crops against loss by drouth, fire, hail, etc. (R. 4, 8). Prior to and at the time the application was signed respondents fully informed the corporation, through its agent, the Bonneville County Agricultural Conservation Committee, that they were planting 460 acres of early Bart spring wheat, 400 acres of which they were planting on land that had been seeded to early Bart spring wheat in 1944 and had winter-killed, and 60 acres on summer fallowed land (R. 10).

Respondents were advised by the agents of said Corporation that all of said spring wheat crop was eligible for insurance for the year 1945 and that the Corporation would insure their spring wheat crop. The Bonneville County Agricultural Conservation Committee, agent of the Corporation, on March 26, 1945, recommended the acceptance of the application (R. 10).

On May 28, 1945, the Corporation duly accepted respondents' application for insurance and issued its policy and delivered a copy of the same to respondents, together with a letter of acceptance and instructions for respondents' convenience (R. 12, 13, Ex. "A," "A1," respondents' convenience (R. 12, 13, 111-116, Ex. "A," "A1," "B.")

At the time the policy was mailed to respondents no other instructions or rules were transmitted and no

"Wheat Crop Insurance Regulations" upon which the corporation relied as a defense were mailed to respondents, who knew nothing about any such regulations (R. 13, 14).

Respondents planted 460 acres of spring wheat during the months of March and April 1945. The crop made normal growth until the middle of July 1945, but thereafter the entire crop, except 1254 bushels, was lost because of drouth (R. 14).

On August 7, 1945, respondents notified the corporation in writing of the loss pursuant to the letter of instructions mailed respondents at the time the policy was transmitted to them (R. 17, 18, Ex. C. 117).

On or about September 21, 1945, the Corporation, through its agents, John P. Mix and C. N. Scorsbey, made an inspection of said crop loss (R. 21-23, 82), and thereupon made out a written "Report of Inspection" and delivered a copy thereof to respondents and advised respondents that said loss would be promptly paid (R. 39, 87). There is no dispute as to the amount of loss sustained by the respondents. The premium on said policy became payable, pursuant to the regulations, following the maturity of the contemplated crop, and shortly prior to November 8, 1945, the corporation submitted a statement to respondents requesting payment of said insurance premium for the year 1945 in the sum of $309.47. Said amount was paid November 8, 1945, and was accepted and thereafter retained by said corporation (R. 40-42). Shortly following the corporation's receipt of respondents' premium it notified respondents that the loss would not be paid (R. 45). On January 18, 1946, respondents instituted suit, in the appropriate state court having jurisdiction of the cause

against the insurance corporation for the sum of $3,960.30, which was the loss for 3070 bushels of early Bart spring wheat. Answer was filed by the defendant and said cause tried before a jury on March 19, 1946, and a verdict was rendered by said jury in favor of the respondents for $3,960.30 and costs. Thereupon the clerk's judgment was duly filed, from which judgment the corporation appealed to the Supreme Court of the State of Idaho. The Supreme Court affirmed said judgment on November 26, 1946. See Merrill et al v. Federal Crop Insurance Corporation, (Ida.) 174 P. (2) 834.

The petitioner seemingly contends that refusal to pay said loss was justified by an alleged regulation made by the Directors of the Corporation on January 29, 1945, and thereafter published in the Federal Register, which said regulation in so far as it pertains to the question in controversy reads in part as follows:

"Sec. 414.37. MEANING OF TERMS.

* * * * * *

"V. 'Wheat crop' means all seeded spring and winter wheat, including voluntary wheat and other voluntary small grain and vetch growing with the seeded wheat crop and including small grains seeded with the growing wheat crop on acreage not released by the corporation. The term 'wheat crop' shall not include voluntary wheat not growing with the seeded crop, wheat seeded with a mixture of flax or other small grain or vetch, true type winter wheat seeded in the spring, winter wheat seeded in the 1945 crop year and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year."

The foregoing definition was not contained in the policy of insurance nor in the letter of instructions sent with the policy. Respondents knew nothing of such regulation. The agents of the Corporation who solicited the insurance apparently knew nothing of such regulation but did know the character of the planted crop. The entire transaction was carried through as if such regulation never existed and respondents were led to believe that said insurance would be without controversy.

It is to be observed that this regulation is not a legislative enactment but merely an expression of a rule by the Board of Directors of the Corporation, and subject to amendment at any time.

ARGUMENT

The petitioner urges that it is necessary for this Court to determine whether or not the theory of equitable estoppel can be invoked in this case by reason of the fact that it is a Federal agency. It asserts that to permit such would be applying this rule to the Federal Government. The petitioner's position is quite inaccurate. The true theory underlying the facts of this case is aptly stated by the Supreme Court of the State of Idaho in the decision which petitioner desires to have reviewed. In Merrill v. Federal Crop Insurance Corporation, 174 P. (2) 834, the Idaho Court reviews the facts and considers the legal principles which would ordinarily be appled thereto and on page 835 says:

> "These rules would fix the liability of the appellant if it were a private corporation. However, the appellant urges that it is a governmental agency; that the regulation in question has the force and effect of a law; that under the federal Register Act the respondents had constructive

notice of its contents; and that the same was binding upon the respondents. The regulation in question is not a law. The appellant had authority to insure wheat crops for the years 1945, 1946 and 1947, but as a matter of policy determined not to insure in 1945 spring wheat planted on ground sown to fall wheat in 1944 and issued such regulation as a declaration of policy for the guidance of its officers and agents. We are not concerned with the effect of such regulation if the respondents had known of its existence, as it must be conceded that the respondents had no actual knowledge of it. Likewise, the ultimate question in this case is not one of constructive notice but of equitable estoppel. Under the facts in this case all of the elements of equitable estoppel are present. The appellant in effect contends that estoppel is not applicable to it as an agency of the government. This court in State v. Twin Falls, etc., Water Co., 30 Idaho 41, 166 P. 220, 230, spoke as follows:

'Generally the doctrine of equitable estoppel does not apply to the government 16 Cyc. 780. There are, however, exceptons to this rule. See United States v. Stinson, (7 Cir.) 125 F. 907, 60 C. C. A. 615; United States v. Willamette Valley, etc. Road Co., C. C., 54 F. 807. In the Stinson case the court said: "When the government seeks its rights at the hands of a court, equity requires that the rights of others as well should be protected. Carr v. United States, 98 U. S. (432), 438, 25 L. Ed. 209 (211). The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable injury. The substantial considerations underlying the doctrine of estoppel apply to government as well as to individuals'."

See also Woodruff v. Trapnall, 10 How. 190, 51 U. S. 190, 13 L. Ed. 383.

> Here we are not dealing directly with the government as such nor with a duly enacted law, but are dealing with a corporation created as an agency of the Department of Agriculture and with one of its regulations adopting a policy with respect to the conduct of its proprietary insurance business. The respondents purchased the insurance in question in good faith and thereafter suffered a loss. The appellant through its agent had knowledge of the material facts. It is now estopped from denying the validity of the insurance contract."

This theory is supported by numerous cases.

In the case of Bayne v. United States, 195 F. 236, the Eighth Circuit of Appeals considered a matter where a supplemental contract for the construction for the United States of a bridge over a river contemplated that the contractor should furnish 191 piles over 33 feet in length for a specified compensation but the engineer-officer in charge determined it necessary to drive more piles than was contemplated in the contract and at a greater depth. In allowing judgment for the additional amount the court on page 241 says:

> "We are further of the opinion that as the piles were driven under the direction of the engineer-officer in charge of the work on the part of the United States, and he at no time objected to the driving of the same, that after the piles were driven the United States are estopped from claiming that the officer in charge did not deem it necessary to drive only those piles which were actually driven more than 33 feet."

This theory is aptly expressed by the 8th Circuit Court of Appeals in the case of Utah Power & Light Company vs. United States, 230 F. 328, on page 342, as follows:

> "Nevertheless, there can be no doubt that situations may be and are presented where both state and nation enter courts of equity as suitors under conditions which place them upon an equal footing, in this respect, with the private citizen; that where the relations existing are such as to convey actual knowledge of and acquiescence in asserted claims under conditions which would make the subsequent denial of such claims inequitable, the doctrine of equitable estoppel as distinguished from mere laches may be invoked even against the government."

Here again, we urge that it is not necessary to go this far because the assertion of equitable estoppel in this case is against a corporation organized by the Government with the initial subscription of stock so advanced but ultimately intended to be owned by the insurers and whose regulations, upon which the petitioner relies, are fixed by the board of directors and for the purpose of engaging in a strictly proprietary business of insurance and for no other purpose. It is not engaged in governmental affairs. As aptly stated by the Idaho Supreme Court, supra, "the regulation in question is not a law." Hence the application of the doctrine of equitable estoppel does not interfere with governmental functions.

The theory for which respondents contend is further supported by the following cases:

Branson v. Wirth, 84 U. S. 32; 21 L. Ed 566;
State of Iowa v. Carr, 191 F. 257;
Walker v. United States, 139 F. 409.

Attention has heretofore been called to the fact that Congressional enactment provides that this Corporation may sue or be sued in either the state or Federal courts. This enactment gives support to the theory that the Corporation engaged in a proprietary business and not necessarily acting in governmental matters should be subject to the same legal principles as if it were a private corporation. In Walker v. United States, supra, on page 412 of Vol. 139 Federal Reporter, the Court says:

> "United States v. Arredondo, 6, Pet. 712, 8 L. Ed. 547, was a suit under an act by which the United States consented to be sued to determine whether certain lands in Florida were private property or passed to the Government by the cession from the King of Spain, the Supreme Court said:
>
> "'By consenting to be sued and submitting the decision to judicial action, they have considered it was a purely judicial question, which we are now bound to decide as between man and man on the same subject matter'."

So in this case it is provided by Congressional Enactment that the petitioner may be sued in the courts of any state where the cause of action arose and with the obvious intent that it may be subjected to the laws of such state where such laws do not definitely conflict with the Federal laws. There is no conflict in this case.

Petitioner on page 19 of its petition asserts that there is a conflict in principle if not in actual holding between the instant case and Felder v. Federal Crop Insurance Corporation, 146 F. 638. A careful consideration of this case does not indicate such conflict but rather, the reverse. In the last paragraph of the opinion, on page 640, the Court says:

> "We might point out that this case involves no element of technical estoppel. No act of any officer prevented the timely filing of proof of loss, but on the contrary the period for filing such proof had already elapsed before even the commission of any of these acts."

In the instant case the decision is based upon the theory of estoppel. Very obviously the 4th Circuit Court of Appeals would have held differently if the insured had been misled or that agents of the Corporation had led him to believe that his course of conduct was in accordance with the rules.

In the case at bar the agents of the petitioner were advised before the policy was issued that the wheat had been planted on the type of land which the corporation now asserts was excluded from insurance. Knowing these facts, the agents urged the acceptance of the policy and secured its submision to the respondents; they then inspected the loss and prepared for the respondents' signature the Proof of Loss and advised respondents that the claim would be paid and thereafter the Corporation submitted statement for the premium on the policy and accepted and retained the payment therefor, with never an offer of refund, and raised no objections to the payment or to the policy until "pay-day" arrived. Had similar facts been presented in the Felder case, supra, undoubtedly a different decision would have been reached.

Petitioner states at Page 12 of its Brief:

> "Petitioner could not consequently be estopped by the knowledge by its County Agents of the re-seeded character of respondent's crop, and their failure to advise respondent of its non-eligibility for insurance, and petitioner was not

> procluded from subsequently denying responsibility for the crop loss. For, it is well established that the United States is neither bound nor estopped by the acts of its Officers or Agents in entering into an arrangement or agreement to do, or cause to be done, what the law does not sanction or permit."

It must be remembered that not only the County Committee, who was the Agent of the Insurance Company but also John P. Mix, State Agent of the Insurance Company had actual knowledge of the facts of the case. We are not dealing with the United States in the case at bar. We are dealing with an insurance corporation, whose sole duty it is to solicit and sell insurance to Farmers and we most sincerely urge that the corporation should be bound by the same rules and regulations as any other insurance company. It seems to us that there is a vast difference between the United States Government and a corporation duly organized and existing as a branch of the Department of Agriculture and especially when the corporation is organized for the sole purpose of going out among the farmers and soliciting insurance. When the corporation sends its agents out to induce the farmers to buy its insurance, certainly it ought to be governed by the same rules, laws and regulations as other insurance companies are governed in the particular state wherein it is doing business.

Then Petitioner says at Page 20 of its Brief:

> "The Government has always been favored in the Court so far as its liabilities for unauthorized acts of its Agents is concerned."

Again let us respectfully say that the Government of the United States is not in this case. The Petitioner is a corporation, as stated above, organized for the sole

purpose of selling insurance to the farmers and if this distinction will be kept in mind, it seems to us that one would have no difficulty in analyzing the law applicable to the Government of the United States as counter-distinguished from insurance corporations.

Again petitioner argues at Page 32 of its Brief:

> "That the 'Government' did not enter into the field of business in the accepted sense for commercial purposes and therefore does not stand in the same relation to the insured as do ordinary insurance companies."

The Federal Crop Insurance Corporation derives its entire income from the earnings of the farmers through the premiums charged. The Government loaned to the Insurance Company sufficient money to start out. Every dollar of this money had to be returned to the Government or the Department of Agriculture as the Insurance Company collected from the various farmers. So, in reality, it is not the Government of the United States that is financing the Federal Crop Insurance Corporation, except to merely get it started. It is the farmers throughout the Country. As we read the act, out of the premiums collected from the various farmers, the corporation must set aside sufficient money to pay back the Government what it borrowed, sufficient money for overhead expenses, sufficient money for losses, and sufficient sums to withstand any emergency that the corporation might be called upon to stand. All of these funds are monies that have been collected from the various farmers and not money that it borrowed from the United States Government or from the Department of Agriculture.

The only way private insurance companies can exist is by collecting premiums. The only way Petitioner

can exist is by selling insurance to farmers and collecting premiums as they did in the case at bar. Hence, the Petitioner did enter into the field of insurance in every sense of the word and for no other purpose and should be measured by the same laws that govern private insurance companies.

We believe it is the spirit of the "act itself" that the Petitioner, (Federal Crop Insurance Corporation) should be bound by the local laws of the State wherein it is doing business, the same as any other insurance corporations are bound. If this is not so, why did the act specifically provide that the corporation could be sued in any court of record in any state wherein it was doing business.

The Doctrine of Equitable Estoppel is a mixed question of law and fact (Independent Gas, Etc. Company vs. T. B. Smith Co. 51 Idaho, 710: 10 P (2d) 317). The Jury was properly instructed on the Doctrine of Estoppel (Instruction No. 10; R 148-149) and where there is substantial evidence to support the verdict of the jury, the same will not be set aside on appeal. I.C.A. Sec. 11-219 First National Bank vs. Dosehades, 47 Idaho 661; 279 Pac. 416.

Petitioner is relying on the Federal Register, which is a "record" containing their rules and regulations. The defendant must plead "Estoppel by Record" if it intends to rely thereon.

Burton vs. Bagley, 50 Idaho 707; 300 Pac. 359

21 C. J. 1243 Sec. 248

10 R. C. L. 842 Sec. 148

10 Cal. Jur. 653 Sec. 30

In the case of Aylward vs. State Board of Chiropractic Examiners, 172 P. (2d), 903, the California Supreme Court said:

> "In the recent case of County of San Diego vs. California water, etc., Co., 75 Cal. App 2d—, 171 P. (2d) 926, 932, a "governmental agency may be estopped as right and justice may require, where the act or contract relief on to create the estoppel was within its corporate powers, although the method of exercising the power was irregular or unauthorized. 31 C.J.S., Estoppel, § 144, p. 428, Note 78; Miller vs. McKinnon, 20 Cal.-2d 83, 91, 124 P (2d) 34, 140 A.L.R. 570; Greene County vs. Tennessee Eastern Electric Co., 6 Cir., 40 F. 2d 184; 7 Cal. Jur., p. 515, sec. 88."

As we view the case at bar, the only question involved is that of "Equitable Estoppel," and the Petitioner ought to be estopped to dery liability.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Supreme Court of the State of Idaho should be upheld.

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SUPREME COURT OF THE UNITED STATES

No. 45.—October Term, 1947.

The Federal Crop Insurance Corporation, *v.* A. A. Merrill and N. D. Merrill, Co-Partners, doing business under the firm name and style of Merrill Bros.	On Writ of Certiorari to the Supreme Court of the State of Idaho.

[November 10, 1947.]

Mr. Justice Frankfurter delivered the opinion of the Court.

We brought this case here because it involves a question of importance in the administration of the Federal Crop Insurance Act. 331 U. S. 798.

The relevant facts may be briefly stated. Petitioner (hereinafter called the Corporation) is a wholly Government-owned enterprise, created by the Federal Crop Insurance Act, as an "agency of and within the Department of Agriculture." Sec. 503 of Chapter 30, Act of February 16, 1938, 52 Stat. 72, 7 U. S. C. § 1503, as amended. To carry out the purposes of the Act, the Corporation, "Commencing with the wheat . . . crops planted for harvest in 1945" is empowered "to insure, upon such terms and conditions not inconsistent with the provisions of this title as it may determine, producers of wheat . . . against loss in yields due to unavoidable causes, including drought. . . ." 52 Stat. 74, § 508 (a) as amended, 55 Stat. 255, in turn amended by the Act of December 23, 1944, Chapter 713, 58 Stat. 918, 7 U. S. C., Supp. V. § 1508 (a). In pursuance of its authority, the Corporation on February 5, 1945, promulgated its Wheat Crop Insurance Regulations, which were duly published in the Federal Register on February 7, 1945. 10 F. R. 1586.

On March 26, 1945, respondents applied locally for insurance under the Federal Crop Insurance Act to cover wheat farming operations in Bonneville County, Idaho. Respondents informed the Bonneville County Agricultural Conservation Committee, acting as agent for the Corporation, that they were planting 460 acres of spring wheat and that on 400 of these acres they were reseeding on winter wheat acreage. The Committee advised respondents that the entire crop was insurable, and recommended to the Corporation's Denver Branch Office acceptance of the application. (The formal application itself did not disclose that any part of the insured crop was reseeded.) On May 28, 1945, the Corporation accepted the application.

In July, 1945, most of the respondents' crop was destroyed by drought. Upon being notified, the Corporation, after discovering that the destroyed acreage had been reseeded, refused to pay the loss, and this litigation was appropriately begun in one of the lower courts of Idaho. The trial court rejected the Corporation's contention, presented by a demurrer to the complaint, that the Wheat Crop Insurance Regulations barred recovery as a matter of law. Evidence was thereupon permitted to go to the jury to the effect that the respondents had no actual knowledge of the Regulations, insofar as they precluded insurance for reseeded wheat, and that they had in fact been misled by petitioner's agent into believing that spring wheat reseeded on winter wheat acreage was insurable by the Corporation. The jury returned a verdict for the loss on all the 460 acres and the Supreme Court of Idaho affirmed the resulting judgment. 67 Idaho —. That court in effect adopted the theory of the trial judge, that since the knowledge of the agent of a private insurance company, under the circumstances of this case, would be attributed to, and

thereby bind, a private insurance company, the Corporation is equally bound.

The case no doubt presents phases of hardship. We take for granted that, on the basis of what they were told by the Corporation's local agent, the respondents reasonably believed that their entire crop was covered by petitioner's insurance. And so we assume that recovery could be had against a private insurance company. But the Corporation is not a private insurance company. It is too late in the day to urge that the Government is just another private litigant, for purposes of charging it with liability, whenever it takes over a business theretofore conducted by private enterprise or engages in competition with private ventures.[1] Government is not partly public or partly private, depending upon the governmental pedigree of the type of a particular activity or the manner in which the Government conducts it. The Government may carry on its operations through conventional executive agencies or through corporate forms especially created for defined ends. See *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U. S. 381,

[1] Judging from the legislative history of the Act, the Government engaged in crop insurance as a pioneer. Private insurance companies apparently deemed all-risk crop insurance too great a commercial hazard. See Report and Recommendations of the President's Committee on Crop Insurance, H. Doc. No. 150, 75th Cong., 1st Sess., pp. 2–4, 11–12; H. Rep. No. 1479, 75th Cong., 1st Sess., p. 2; 81 Cong. Rec. 2866, 2867, 2887, 2891, 2893, 2895; Hearings before a Subcommittee of the Senate Committee on Agriculture and Forestry on S. 1397, 75th Cong., 1st Sess., 125, 185. But this does not affect the legal issues. It merely underscores the fact that the undertaking by the Government is not an ordinary commercial undertaking, and thereby reenforces the conclusion that the rules of law whereby private insurance companies are rendered liable for the acts of their agents are not bodily applicable to a Government agency like the Corporation, unless Congress has so provided.

390. Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e. g., *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409; *United States* v. *Stewart*, 311 U. S. 60, 70, and see, generally, *The Floyd Acceptances*, 7 Wall. 666.

If the Federal Crop Insurance Act had by explicit language prohibited the insurance of spring wheat which is reseeded on winter wheat acreage, the ignorance of such a restriction, either by the respondents or the Corporation's agent, would be immaterial and recovery could not be had against the Corporation for loss of such reseeded wheat. Congress could hardly define the multitudinous details appropriate for the business of crop insurance when the Government entered it. Inevitably "the terms and conditions" upon which valid governmental insurance can be had must be defined by the agency acting for the Government. And so Congress has legislated in this instance, as in modern regulatory enactments it so often does, by conferring the rule-making power upon the agency created for carrying out its policy. See § 516 (b), 52 Stat. 72, 77, 7 U. S. C. § 1516 (b). Just as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents. 49 Stat. 502, 44 U. S. C. § 307.

Accordingly, the Wheat Crop Insurance Regulations were binding on all who sought to come within the Federal Crop Insurance Act, regardless of actual knowledge of

what is in the Regulations or of the hardship resulting from innocent ignorance. The oft-quoted observation in *Rock Island, Arkansas & Louisiana Railroad Co.* v. *United States*, 254 U. S. 141, 143, that "Men must turn square corners when they deal with the Government," does not reflect a callous outlook. It merely expresses the duty of all courts to observe the conditions defined by Congress for charging the public treasury. The "terms and conditions" defined by the Corporation, under authority of Congress, for creating liability on the part of the Government preclude recovery for the loss of the reseeded wheat no matter with what good reason the respondents thought they had obtained insurance from the Government. Indeed, not only do the Wheat Regulations limit the liability of the Government as if they had been enacted by Congress directly, but they were in fact incorporated by reference in the application,[2] as specifically required by the Regulations.[3]

---

[2] "H. Acceptance by the Federal Crop Insurance Corporation.—It is understood and agreed that upon acceptance of the application by a duly authorized representative of the Corporation as evidenced by his approval below, the insurance contract shall be in effect, provided the application has been submitted in accordance with the provisions of the application and the applicable Wheat Crop Insurance Regulations. It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured."

[3] "§ 414.3. *Acceptance of applications by the Corporation.* (a) Upon acceptance of an application by a duly authorized representative of the Corporation, the insurance contract shall be in effect, provided such application is submitted in accordance with the provisions of the application and of these regulations, including any amendments thereto." 10 F. R. 1586. The regulation defined "insurance contract" as "the contract of insurance entered into between the applicant and the Corporation by virtue of the application for insurance and these regulations and any amendments thereto." 10 F. R. 1591.

We have thus far assumed, as did the parties here and the courts below, that the controlling regulation in fact precluded insurance coverage for spring wheat reseeded on winter wheat acreage. It explicitly states that the term "wheat crop shall not include . . . winter wheat in the 1945 crop year, and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year." (Sec. 414.37 (v) of Wheat Crop Insurance Regulations, 10 F. R. 1591.) The circumstances of this case tempt one to read the regulation, since it is for us to read it, with charitable laxity. But not even the temptations of a hard case can elude the clear meaning of the regulation. It precludes recovery for "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year." Concerning the validity of the regulation, as "not inconsistent with the provisions" of the Federal Crop Insurance Act, no question has been raised.

The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE BLACK and MR. JUSTICE RUTLEDGE dissent.

SUPREME COURT OF THE UNITED STATES

No. 45.—October Term, 1947.

The Federal Crop Insurance Corporation, *v.* A. A. Merrill and N. D. Merrill, Co-Partners, doing business under the firm name and style of Merrill Bros.	On Writ of Certiorari to the Supreme Court of the State of Idaho.

[November 10, 1947.]

Mr. Justice Jackson, dissenting.

I would affirm the decision of the court below. If crop insurance contracts made by agencies of the United States Government are to be judged by the law of the State in which they are written, I find no error in the court below. If, however, we are to hold them subject only to federal law and to declare what that law is, I can see no reason why we should not adopt a rule which recognizes the practicalities of the business.

It was early discovered that fair dealing in the insurance business required that the entire contract between the policyholder and the insurance company be embodied in the writings which passed between the parties, namely, the written application, if any, and the policy issued. It may be well enough to make some types of contracts with the Government subject to long and involved regulations published in the Federal Register. To my mind, it is an absurdity to hold that every farmer who insures his crops knows what the Federal Register contains or even knows that there is such a publication. If he were to peruse this voluminous and dull publication as it is issued from time to time in order to make sure whether anything has been promulgated that affects his rights, he would never need crop insurance, for he would never get

time to plant any crops. Nor am I convinced that a reading of technically-worded regulations would enlighten him much in any event.

In this case, the Government entered a field which required the issuance of large numbers of insurance policies to people engaged in agriculture. It could not expect them to be lawyers, except in rare instances, and one should not be expected to have to employ a lawyer to see whether his own Government is issuing him a policy which in case of loss would turn out to be no policy at all. There was no fraud or concealment, and those who represented the Government in taking on the risk apparently no more suspected the existence of a hidden regulation that would render the contract void than did the policyholder. It is very well to say that those who deal with the Government should turn square corners. But there is no reason why the square corners should constitute a one-way street.

The Government asks us to lift its policies out of the control of the States and to find or fashion a federal rule to govern them. I should respond to that request by laying down a federal rule that would hold these agencies to the same fundamental principles of fair dealing that have been found essential in progressive states to prevent insurance from being an investment in disappointment.

MR. JUSTICE DOUGLAS joins in this opinion.